BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	GEN Docket No. 90-314
	)	

MCI OPPOSITION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

Although numerous parties have sought reconsideration of many issues, the petitioners have failed to demonstrate the necessity or desirability of substantially altering the PCS allocation and licensing rules adopted by the Commission last September. With modest revisions and clarifications — such as those requested by MCI and by others — the PCS rules are ready for implementation and the Commission's program should move forward expeditiously.

A number of petitioners seek fundamental changes in the block allocation plan for the licensed PCS band. Most, if not all, of the proponents of "modular" block allocation schemes are incumbent cellular and ESMR licensees. "Modularization" of the licensed PCS band would greatly increase the cost and delays associated with the development of broadband wide-area PCS systems, by requiring new entrants to resort to the secondary market to obtain sufficient quantities of spectrum to compete with these incumbents. It is difficult to conceive of a more self-serving position under the circumstances. These petitions must be denied, and the Commission's basic block allocation plan reaffirmed.

A number of rural telephone companies request authority to compel successful auction bidders to carve out or partition service areas coextensive with their telephone franchise areas, and resell that partition to the rural telephone company at cost. MCI is vehemently opposed to any form of compulsory partitioning. Such an approach would confer upon rural telephone companies a "veto power" over the deployment of broadband PCS. If compulsory partitioning were authorized, the winning bidder for a regional PCS license would lack the ability to make independent decisions as to the choice of switching and RF technology, incumbent microwave

migration and system buildout. For this reason, compulsory partitioning must be summarily rejected.

Proposals for unlimited voluntary partitioning pose similar risks to the deployment of PCS. Excessive "splintering" of either spectrum or geography would greatly increase the complexity and cost of coordinating frequency use and avoiding interference among systems occupying adjacent territories and frequency bands. If voluntary partitioning authority is granted, it should be limited to partitions no smaller than a BTA with not less than 10 MHz of spectrum, pending examination of the feasibility of smaller partitions in a separate rulemaking.

In its "Petition for Partial Reconsideration and Clarification," MCI recommended that the Commission foreclose the nine largest cellular carriers and their affiliates — which dominate the cellular market — from eligibility in bidding for at least one of the 30 MHz MTA blocks. As MCI explained, if those entities are awarded PCS licenses, it is unlikely that they would meaningfully compete against their own cellular interests. On the other hand, excluding them from the auction process would foster the development of a vibrant competitive alternative to cellular services. The efforts of these parties to weaken the Commission's eligibility and attribution rules serves only to underscore the need for the Commission to modify its rules as MCI proposes.

As demonstrated by MCI and others, a substantial increase in the base station power limit — to 1000 W ERP or higher — would facilitate the economic deployment of PCS by reducing the number of base stations needed, permit the deployment of new technologies, and facilitate competition with cellular. An increase in the base station power limit would not result in increased interference to microwave systems or in increased exposure to RF radiation. For these

reasons, MCI reiterates its recommendation that the Commission increase base station power limits to not less than 1000 W ERP (1600 W EIRP). An increase in the permissible power levels to 12 W ERP (20 W EIRP) for non-handheld subscriber units would increase the flexibility of 2 GHz PCS licensees to meet customer requirements, and this proposed revision should be adopted.

MCI supports the Commission's "hands-off" approach to the PCS standards issue and urges rejection of the Motorola and TIA petitions insofar as they urge the Commission to make compliance with "voluntary" industry standards mandatory for PCS providers.

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Communications Services	)	

MCI OPPOSITION

MCI Telecommunications Corporation (MCI), by its attorneys, hereby submits this opposition to certain petitions for reconsideration or clarification of the Commission's Second Report and Order[1/] (Order) in the above-captioned proceeding. As will be demonstrated herein, the Order - taken as a whole - represents a sound framework for the authorization and implementation of a broad range of personal communications services (PCS).

I. INTRODUCTION

Although numerous parties have sought reconsideration of many issues, the petitioners have failed to demonstrate the necessity or desirability of substantially altering the PCS allocation and licensing rules adopted by the Commission last September. With modest revisions and clarifications — such as those requested by MCI and by others — the PCS rules are ready for implementation and the Commission's program should move forward expeditiously.

[1/] 8 FCC Rcd 7700 (1993).

II. ARGUMENT

A. THE ALLOCATION OF SPECTRUM FOR PERSONAL COMMUNICATIONS SERVICES IS SOUND AND REASONABLE AND SHOULD BE REAFFIRMED IN ALL MATERIAL RESPECTS.

The Commission's Basic Plan. For the reasons set forth in ¶¶ 58-60 of the Order, the Commission adopted a block allocation plan for licensed PCS that includes a variety of bandwidths and geographic areas. This plan was expressly and appropriately designed to allow prospective PCS providers with differing spectrum needs and marketing plans to acquire appropriately-sized blocks of spectrum at auction, thereby minimizing transaction costs and service delays attributable to post-license aggregation or subdivision.

Proposed Changes To The Basic Plan. A number of petitioners seek fundamental changes in the licensed PCS band, with a common theme being smaller spectrum blocks and smaller license areas.[2/] It is not surprising that most, if not all, of the proponents of these "modular" block allocation schemes are incumbent cellular and ESMR licensees.[3/] These requests for the "modularization" of the licensed PCS band would, if granted, greatly increase the cost and delays associated with the development of broadband wide-area PCS systems by requiring new entrants to resort to the secondary market to obtain sufficient quantities of spectrum to compete with these incumbents. It is difficult to conceive of a

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[2/] One petitioner (Murray) requests the creation of twelve 10 MHz BTA-based blocks. Several (including Bell Atlantic, BellSouth, Point and TDS) recommend the creation of six 20 MHz blocks. Others (including CTIA, Florida Cellular and Nextel) want four 20 MHz blocks and four 10 MHz blocks, all BTA-based. Finally, Iowa Network Services requests three 30 MHz (two MTA and one BTA) and three 10 MHz (BTA) blocks.

[3/] The one petitioner not clearly identifiable as a cellular or ESMR incumbent is George E. Murray, whose cellular interests are described in the past tense.

more self-serving position under the circumstances. Accordingly, these petitions must be denied, and the Commission's block allocation plan reaffirmed.[4/]

Partitioning and Subdivision. Several petitioners urge the Commission to authorize "subdivision" or "partitioning" of spectrum or territory.[5/] McCaw envisions the submission of joint bids, with subdivision on either a geographic or a bandwidth basis. Some rural telephone interests ask the Commission to authorize various forms of partitioning, either before or after licensing.[6/] In one form of partitioning, based on the cellular licensing process, participating companies would jointly submit a PCS application for an MTA or BTA through a partnership or joint venture. Once the license was obtained, the participants would obtain Commission approval for voluntary partitioning of the original service area into smaller licensed territories. In the case of rural telephone companies, the partitioned service areas might be coextensive with their telephone franchise areas; cellular carriers might obtain, through partitioning, PCS licenses outside the cellular/PCS overlap areas.

Some petitioners urge the Commission to implement or authorize what might be termed "involuntary" or "compulsory" partitioning, applicable only to rural telephone companies. A rural telephone company would be permitted to compel any broadband PCS licensee to "carve out" from the MTA or BTA an area coextensive with the rural telco's

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[4/] NYNEX proposes a minor modification of the channel plan, entailing the placement of two of the 10 MHz blocks between the 30 MHz blocks and moving the 20 MHz block to the center of the upper band. Such a realignment appears to have several advantages, as explained by NYNEX. MCI recommends that the realignment proposed by NYNEX be given serious consideration by the Commission at this time.

[5/] Alliance, Columbia, McCaw, NTCA, and US Intelco Networks.

[6/] Alliance, Columbia, NTCA and US Intelco.

franchise, and resell that partition to the LEC at cost. MCI is vehemently opposed to any form of compulsory partitioning. Such an approach would confer upon rural telephone companies a "veto power" over the deployment of broadband PCS. If compulsory partitioning were authorized, the winning bidder for a regional PCS license would lack the ability to make independent decisions as to the choice of switching and RF technology, incumbent microwave migration and system buildout. For this reason, compulsory partitioning must be summarily rejected.

Proposals for unlimited voluntary partitioning pose similar risks to the deployment of PCS. Excessive "splintering" of either spectrum or geography would greatly increase the complexity and cost of coordinating frequency use and avoiding interference among systems occupying adjacent territories and frequency bands.[7/] Moreover, unlimited voluntary partitioning would be particularly susceptible to manipulation and evasion of the build-out requirements. A potential bidder may be willing to commit resources sufficient to cover an entire MTA bid, plus the cost of constructing the densely populated areas in the MTA, but may be unwilling to bear the risk of license forfeiture associated with the 90% buildout requirement. Unless the Commission independently reviews the financial qualifications of each of the venture participants at the time of partitioning — thereby increasing processing

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[7/] For example, the holder of a 20 or 30 MHz broadband PCS license for the Philadelphia MTA might "sell" a 50-150 kHz county-based "partition" from the lower edge of its frequency band to a paging company in Southern Delaware. The partitioning of a small slice on the outer fringe of the Philadelphia MTA might have no significant adverse effect on service in the seller's MTA, but could create coordination and interference problems for co-channel and adjacent channel PCS licensees in the Washington-Baltimore area seeking to provide coverage along heavily traveled highways to the Maryland and Delaware seashore resorts.

delays — it will be unable to determine, until far too late, whether the "licensees" of the rural partitions participated in the bidding venture with the intention and ability to render PCS service, or as "straws" for the metropolitan area licensee. Therefore, if the Commission is inclined to grant requests for clarification that voluntary partitioning is permissible, MCI recommends that voluntary partitioning authority be limited to partitioning no smaller than a BTA with not less than 10 MHz of spectrum, pending examination of the feasibility of smaller partitions in a separate rulemaking.[8/]

Aggregation of Spectrum. The Commission's 40 MHz limit on the amount of broadband spectrum that a single licensee may hold in a given area was the subject of numerous petitions for reconsideration and clarification. CTIA asserts that it does not object to a 40 MHz limit per se, but notes that cellular carriers (with 25 MHz of spectrum today) have no ability to aggregate 40 MHz if all PCS licenses are issued in "unbreakable" 10 MHz increments. BellSouth, in a variation on CTIA's theme, requests that the limit be extended to 45 MHz for all (cellular, PCS and ESMR). As noted above, there is no evidence in the record that broadband PCS allocations can be subdivided into 5 MHz (or smaller) increments without substantial adverse effects on microwave relocation or on interference avoidance and frequency coordination between geographically and spectrally adjacent systems. In the absence of any showing that the aggregation limit can be extended to 45 MHz without creating such adverse effects, the limit should be maintained at 40 MHz.

[8/] MCI recommends that these same lower limits (10 MHz and BTA) threshold apply, pending further study, to any leases or other spectrum sharing agreements authorized by the Commission in response to petitions filed by PCS Action and TWT.

Satellite-based Services. In response to comments filed by Celsat, AMSC and others, the Commission (Order at ¶¶ 28, 35 and 63) refrained from allocating two 20 MHz blocks of spectrum (1970-1990 MHz and 2160-2180 MHz) for terrestrial broadband PCS in order to permit potential allocation of spectrum for satellite-based services in the future. In petitions for reconsideration, AMSC, Comsat, and TRW have requested that 20 MHz of spectrum (2180-2200) be carved out from the basic channel plan and held in reserve for possible future use in the provision of mobile satellite services, possibly including a satellite-based PCS-compatible offering. The changes sought by these petitioners would leave only 20 MHz of unpaired spectrum (2130-2150 MHz) in the "upper 2 GHz" PCS band and, as a result, would require fundamental changes in the Commission's PCS channel plan. To the extent the Commission believes there may be a future need for additional MSS spectrum, MCI believes that the Commission should adopt the alternative recommended by Motorola; that is, initiate a separate proceeding to identify and allocate other bands for MSS, perhaps in some portion of the federal government spectrum to be made available for non-government use.

Other Requested Changes. Two petitioners request set-asides within the 2 GHz band for interests not specifically addressed in the Order. APCO seeks a separate public safety allocation within the 1850-1990 MHz band, and UTC requests that a portion of the PCS spectrum be set aside for non-commercial licensing. These requests should be denied. Public safety and non-commercial users have not demonstrated that they have requirements for spectrum within the 1850-1990 MHz band that cannot be satisfied in some other way (e.g., the reallocation of spectrum in other bands, or the purchase of communications services from PCS licensees).

Several parties question whether the Commission should modify its PCS service area definitions (currently based upon Rand McNally's BTA and MTAs). Two alternatives — resort to the cellular MSA/RSA framework (Killen, Point) and commencing a new proceeding to define unique FCC licensing areas (UTC) — are clearly unacceptable at this late date. The Commission properly rejected the MSA/RSA areas as too small for PCS. Given the Commission's multi-year experience in defining cellular RSA boundaries through rulemaking, it would plainly be impossible to "start over" and still meet the statutory deadlines for the commencement of PCS licensing. MCI supports Telocator's recommendation that PCS licensing areas be restated in terms of county-based BTAs aggregated into MTAs.

B. THE COMMISSION SHOULD MODIFY ITS ELIGIBILITY RULES TO EXCLUDE THE NINE LARGEST CELLULAR CARRIERS AND SHOULD OTHERWISE AFFIRM ITS DECISION.

In the Order, the Commission dealt at length with the significant public interest concerns presented by the entry of cellular and local exchange carriers ("LECs") into the PCS field. Given "the potential for unfair competition if cellular operators are allowed to operate PCS systems in areas where they provide cellular service," (¶ 105) the Commission adopted PCS eligibility rules for cellular carriers and LECs. It permitted parties with an interest of less than 20 percent in a cellular entity to hold a PCS license, but restricted parties with a 20 percent or greater interest in a cellular entity to one 10 MHz BTA license in its cellular service area. (¶ 107) The Commission further held that when 10 percent or more of the population of a PCS service area is within a cellular carrier's existing service

area, the cellular carrier will be eligible for only one of the 10 MHz BTA blocks. (¶ 105).[9/] These compromises were more than fair to the affected entities, given the Commission's overriding goal of nurturing the PCS alternative.

In arriving at its eligibility and attribution standards, the Commission sought to strike a balance between permitting the participation of cellular and other entities in PCS services and ensuring that those entities do not abuse their market power to undermine the development of competition in the PCS field. (¶ 106-07) The entrenched cellular and LEC interests are now urging the Commission to relax its eligibility rules in order to subvert the Commission's fundamental objectives in this proceeding. The Commission must reject their proposals. At bottom, the cellular and LEC parties are merely rearguing positions which the Commission has fully considered and rejected; and, therefore, there is no basis for granting their reconsideration requests.

In its "Petition for Partial Reconsideration and Clarification," MCI recommended that the Commission foreclose the nine largest cellular carriers and their affiliates — which dominate the cellular market — from eligibility in bidding for at least one of the 30 MHz MTA blocks. As MCI explained, if those entities are awarded PCS licenses, it is unlikely that they would meaningfully compete against their own cellular interests, while excluding

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[9/] The Commission provided that the 10 percent population overlay limit applies on a cumulative basis when a party owns attributable interests in more than one overlapping cellular system. For example, the Commission indicated that if a party owns two cellular systems and each has a 5 percent population overlap in the PCS service area, that party would be deemed to have a 10 percent overlap. (¶ 105, n.90) The Commission also decided that all PCS ownership interests of 5 percent or more will be attributed to the holder of that interest for determining whether PCS licensees have aggregated no more than 40 MHz of spectrum. (¶ 61)

them from the auction process would foster the development of a vibrant competitive alternative to cellular services.[10/] The efforts of these parties to weaken the Commission's eligibility and attribution rules serves only to underscore the need for the Commission to modify its rules as MCI proposes.

Cellular Carrier Eligibility. The quarrels of the cellular carriers with the Commission's eligibility rules and their sundry proposals for revising those rules are entirely without merit. Thus, although BellSouth claims that the eligibility rules are "arbitrary," it fails to demonstrate that the Commission's policy approach is not a rational and logical outgrowth of its public interest objective of stimulating competition in PCS services.[11/] NYNEX, in turn, complains that the Commission's attribution rules are "too strict" and it presents an unworkable proposal that attributable interests be recognized only in cases of de jure or de facto "control" of a cellular licensee.[12/]

The Commission has wisely declined to adopt the approach NYNEX advocates, explaining, "a clear ownership test is better than one turning on fine legal distinctions of what constitutes 'control' . . . ." (¶ 109) NYNEX would have the Commission engage in precisely the kind of fine line-drawing that the Commission already has determined to be incompatible with its objectives in this proceeding, because it would embroil PCS licensing

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[10/] See MCI Petition for Partial Reconsideration and Clarification at 1-5.

[11/] BellSouth at 10-17.

[12/] NYNEX at 13-15.

in interminable controversies. NYNEX presents no new facts or arguments to support reversing the Commission's conclusion.[13/]

Equally without merit are Bell Atlantic's complaints that the Commission erred by establishing a 20 percent cellular attribution limit while employing a 5 percent attribution limit for PCS interests; that the 5 percent PCS attribution rule is too strict; and that the Commission should not have rejected "control" as the attribution criterion.[14/] In fact, the Commission provided a well-reasoned explanation for its decision to prescribe differing cellular and PCS attribution rules. See Order at ¶¶ 105-7, 61. The Commission was under no obligation to prescribe identical attribution rules; it was only responsible for adopting rules that are rationally related to its public interest objectives in this proceeding. The rules the Commission adopted satisfy that obligation.

The Commission should similarly deny GTE's request that the Commission replace its 20 percent cellular attribution rule with a rule which would allow an entity with a minority interest in a cellular licensee to bid on an MTA frequency block if its share of the cellular POPs in its cellular service area is less than 20 percent of the total POPs in the MTA.[15/] The Commission has already rejected this proposal and GTE offers no new reasons or rationale for reconsideration of that decision.

[13/] The self-serving nature of NYNEX's proposal is underscored by the fact that cellular RSAs can be (and, in some cases, apparently are) effectively controlled through switch sharing and construction and management agreements -- interests which would not necessarily meet the Commission's standards for de facto or de jure control.

[14/] Bell Atlantic at 18-22. See also Alliance at 8; Chickasaw at 1-7; Columbia at 6-8; PMN at 2-5; Pacific Telecom Cellular, Inc. at 2-5.

[15/] GTE at 2-5.

The Commission should also reject CTIA's claim — supported by a proposed antitrust critique — that the Commission's cellular overlap and attribution rules are unduly restrictive[16/] and that the Commission should increase the overlap coverage from 10 percent to 40 percent; increase the cellular attribution rule from 20 percent to 30-35 percent; and adopt a single majority shareholder rule so as to allow passive investments.[17/] The Commission's broad public interest mandate encompasses, but is not limited by, considerations relevant to antitrust enforcement agencies. CTIA's antitrust critique, even if accepted at face value,[18/] is therefore not dispositive.[19/] Moreover, the Commission's cellular coverage and attribution rules are clearly a rational response to its public interest

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[16/] MCI submits that many of the "restrictions" perceived by CTIA and its members are imagined, not real. For example, CTIA and Comcast claim that the rules prevent cellular carriers from providing service in portions of MTAs outside their cellular service areas. But the Commission's rule does not bar such carriers from holding 40 MHz of PCS spectrum in any BTA where 10% overlap of cellular service contours does not exist; it only bars cellular entities from bidding on the 30 MHz MTA-based licenses.

[17/] CTIA at 14-25. For the same reason, the Commission should reject the requests of other parties that the Commission increase the cellular overlap POP coverage limit to 20 percent. See, e.g., Alliance at 8-9; Iowa Network Services at 11-15.

[18/] The results of CTIA's analysis cannot be reconciled with the conclusions of the Department of Justice and the General Accounting Office (GAO) that cellular carriers possess market power. See General Accounting Office, Report to Hon. Henry Reid, U.S. Senate, Concerns About Competition in the Cellular Telephone Service Industry, 1992; U.S. Department of Justice, Reply Comments, Gen. Docket No. 90-314, December 9, 1992, pp. 6-7.

[19/] It is unlikely that CTIA or, indeed, the cellular industry would exist today if the Commission had not rejected, as failing to "address the requirements of cellular design," an earlier Justice Department recommendation, driven by antitrust considerations, that the Commission adopt a "flexible entry policy" for cellular service, and that " a 5 to 10 MHz allocation might be appropriate in test markets." Cellular Communications Service, 49 RR 2d 809, 813 (1981).

objectives in this proceeding. Relaxing those rules as CTIA proposes would flatly undermine those Commission objectives.[20/]

Sprint similarly requests that the Commission increase the cellular coverage overlap limit — from 10 to 20 percent — so that cellular interests can more easily penetrate the PCS market.[21/] In addition, Sprint proposes that the Commission replace its cellular attribution rule with a proposal that the Commission already has rejected.[22/] The Commission's coverage and eligibility rules are the reasonable and logical product of its policy goal of promoting competition in the PCS field. To weaken those rules, as Sprint proposes, would be incompatible with that goal and, accordingly, Sprint's requests must be denied.[23/]

U S West agrees that "[t]he Commission correctly imposed restrictions on the eligibility of cellular carriers to acquire PCS licenses," but it seeks clarification of the 5 percent PCS attribution rule in Section 99.202(c) of the Commission's Rules. U S West asks the Commission to indicate "whether cellular entities restricted to a 10 MHz BTA frequency block in a particular area are also allowed to hold interests of less than 5% in other PCS licenses in that market."[24/] To the extent that the Commission believes that clarification is

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[20/] Even more radical, and wholly without merit, is McCaw's request that the Commission reconsider its cellular eligibility decision. See McCaw at 2-5.

[21/] Sprint at 4-7.

[22/] Under Sprint's proposal, the POPs in the overlap area would be multiplied by the percent of cellular ownership and this would be compared to the total POPs in the PCS license area. In Sprint's view, the permissible overlap in POPs should be at least 20 percent. Id. at 9-10.

[23/] However, it would not be inappropriate for the Commission to address Sprint's request for clarification of whether a cellular company's ownership of other companies that hold PCS licenses would be attributed to the cellular company. Sprint at 12.

[24/] U S West at 26-27.

necessary, it should clarify its policy as follows: As a general matter, no interest of less than five percent in a PCS license is attributable to the holder of that interest, so such interests may be held without regard to ownership or control of overlapping cellular interests. However, as explained in ¶ 110 of the Order in reference to the 20% rule applicable to cellular interests, evasion or abuse of these limits for the purpose of limiting competition will not be tolerated. Any other interpretation would allow cellular interests to aggregate significantly more than 10 MHz of spectrum, thereby undermining the pro-competitive purpose of Section 99.202(c).

U S West also requests clarification of Section 99.204 of the Commission's Rules — which limits a cellular carrier to a 10 MHz BTA block if 10 percent or more of the population of the MTA or BTA is within that carrier's CGSA. U S West suggests that, as drafted, the rule might allow a cellular carrier to bid on both the 10 MHz BTA block and on a 30 MHz MTA block if its cellular service area covers more than 10 percent of the population of the BTA, but less than 10 percent of the population of the MTA.[25/] As U S West acknowledges, the Commission clearly did not intend that a cellular carrier could bid for a 30 MHz MTA block if it were restricted to bidding for a single 10 MHz BTA by virtue of its coverage overlap, and the Commission should so confirm.[26/]

[25/] U S West at 28-29.

[26/] TDS also seeks revisions in the PCS ownership interests and cellular attribution rules contained in Sections 99.202(c) and 99.204. It proposes that the Commission allow an ownership interest of up to 15 percent (instead of 5 percent) in a licensee holding a national PCS license, in the event the Commission retains the cellular eligibility restrictions set forth in Section 99.204, in order to afford cellular entities "meaningful equity participation." TDS at 3. The Commission should reject this proposal. The 5 percent PCS attribution rule was

(continued...)

LEC Eligibility. The Commission decided to allow LECs to provide PCS services without employing separate subsidiaries to do so, and without additional cost-accounting rules; yet it declined to establish set-asides for the LECs. (¶¶ 126-27) The Commission responded to Congress' directive in the Omnibus Budget Reconciliation Act of 1993[27] to provide designated entities — including rural telephone companies — a preference in the auction process by proposing to allow such entities to use tax certificates and installment payments in the event they submit winning bids.[28] In addition, the Commission proposed that the 20 MHz Block C and 10 MHz Block D frequencies be available for bids only by designated entities.[29]

Not satisfied with the open door the Commission has provided them, the rural telephone company interests now seek exemptions from the Commission's cellular and PCS eligibility rules. They seek to avoid the application of Section 99.204 of the Commission's Rules by arguing that the removal of limitations on their ability to provide PCS services

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[26](...continued)
established to "ensure that no individual person or a single entity is able to exert undue market power through partial ownership in multiple PCS licensees in a single service area." (¶ 61) The modification requested by TDS would permit eight or more large cellular carriers to jointly bid upon and control a national PCS license. An increase from 5 to 15% would facilitate the extension of the dominant cellular carriers' market power into this potentially competitive new band. The Commission's rationale for the 5% rule is sound and should not be revisited.

[27] Pub. Law No. 103-66, 107 Stat 312.

[28] None of the petitioners seeking extension of tax certificate benefits to all cellular carriers (e.g., Comcast at 16-18, GTE at 8-11) has demonstrated that such relief is necessary or appropriate. These requests should be denied.

[29] PP Docket No. 93-253, Implementation of Section 309(j) of the Communications Act Competitive Bidding, FCC 93-455, released October 15, 1993.

would serve the interests of rural customers and would be consistent with Congress' intent as expressed in the Budget Reconciliation Act.[30/]

Cellular carriers serving non-rural areas, of course, would also like the same unrestricted freedom to engage in PCS operations that the rural telephone interests seek, but the Commission understandably has decided to apply its cellular eligibility and attribution rules uniformly to entities serving both rural and non-rural areas. Rural and non-rural areas are equally deserving of the pro-competitive benefits that would be engendered by the Commission's policy approach. The interests of rural customers therefore would not be served by the rural telephone companies' proposals. Moreover, although Congress authorized the Commission to afford rural telephone companies certain preferences in bidding on PCS licenses (and the Commission has tailored its PCS rules accordingly), it clearly did not suggest that the Commission should exclude those companies from the application of its generic PCS regulatory policies.[31/]

[30/] See OPASTCO at 5-8; TDS at 3-9; NTCA at 10-12; Anchorage Telephone Utility at 2-3; Rural Cellular Association at 3-6;Alliance of Rural Telephone and Cellular Service Providers at 7-9; U.S. Intelco Networks, Inc. at 8-9; Iowa Network Services at 11-14; PMN, Inc. at 2-5; Concord at 1-3.

[31/] Personal Network Services Corp. (PNS) proposes a "sliding scale" aggregation rule, with no limit on the amount of PCS spectrum that any single entity could control in rural areas. Neither PNS nor any other party has demonstrated the need for more than 40 MHz of spectrum to implement PCS services. If relaxation of the 40 MHz aggregation limit is to occur, the Commission must first develop an adequate record in support of any such change, giving due and careful consideration of all relevant factors, including the need for additional spectrum and the impact on competition. Such sweeping changes are appropriately the subject of a separate rulemaking and should not be undertaken in this reconsideration phase of the PCS rulemaking.

C. PROPOSED CHANGES IN PRE-BID ELIGIBILITY CERTIFICATION AND POST-GRANT PERFORMANCE REQUIREMENTS SHOULD NOT BE ADOPTED.

Eligibility Certification. Comcast (at 12-13) urges elimination of the requirement that applicants certify, prior to auction, that they are legally qualified to bid. Comcast would have the Commission substitute a "firm commitment" by prospective auction participants that they will demonstrate compliance after the auction. Comcast alleges that the requirement that an applicant certify its legal qualification prior to bidding "could present an unproductive, insurmountable obstacle to auction participation" (Comcast at 12) and asserts that winning bidders should be given an opportunity after auction to "conform business relationships to regulatory mandates." (Id. at 13.)

Although Comcast states that "[p]arties should not be permitted to enter auctions contingent upon massive corporate restructuring" (Id., emphasis in original), it does not propose a standard which the Commission might employ to distinguish prohibited "massive restructuring" from permissible "conforming changes." Comcast has not demonstrated how implementation of its proposal would satisfy the requirements of Section 309(j)(5) of the Act,[32/] or that its proposal would not foster costly and time-consuming litigation concerning

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[32/] "No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310." (emphasis supplied)

Although the statute gives the Commission a considerable degree of flexibility in defining the scope of the "information and assurances" to be included in an initial application, this must be read in the context of an "application" which must be "acceptable for filing." Moreover,

(continued...)

the scope of permissible ownership changes, thereby delaying delivery of PCS services to consumers.[33/] Therefore, Comcast's petition should be denied.

Construction Requirements. The Commission (¶ 134) adopted a requirement that 2 GHz PCS licensees offer service to one-third of the population in each market area within five years, two-thirds within seven years and 90 percent within ten years of being licensed. A number of petitioners seek reconsideration or modification of the construction requirements. These range from total elimination of construction requirements in favor of marketplace forces[34/] or fill-in rules[35/] to relaxation of the construction deadlines or percentages for some or all licensees.[36/]

The Commission is required by law to adopt "performance requirements...to ensure prompt delivery of service to rural areas...and to prevent stockpiling or warehousing of

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[32/](...continued)
the statute imposes a clear and unequivocal duty upon the Commission to evaluate the qualifications of the "bidder" submitting an "application" — not those of the successor-in-interest or the assignee of a winning bidder.

[33/] As the Commission is well aware, cellular litigation concerning such issues as whether an applicant's amendment was "minor" (permissible) or "major" (prohibited) tended to drag on for years, consuming an inordinate share of the resources of the Commission and of private parties. See, e.g., Cagal Cellular Communications Corp., 2 FCC Rcd 4270 (Com. Car. Bur., 1987), review denied, 6 FCC Rcd 285 (1991), aff'd sub nom. Singleton v. FCC, 70 R.R.2d 457 (D.C. Cir., 1992).

[34/] BellSouth.

[35/] Alliance, Columbia, and Rural Cellular Association.

[36/] MEBTEL, Motorola, NTCA, PNS and SW Bell.

spectrum...."[37] For this reason, requests for de jure[38] or de facto[39] elimination of construction requirements for 2 GHz PCS must be rejected.

As noted by numerous petitioners, the Commission's existing limitations on base station and subscriber unit power levels will require enormous investments on the part of PCS licensees to attain 90% coverage. The infrastructure cost per subscriber will be far higher in suburban and rural areas than in densely populated urban areas. For this reason, if the Commission does not substantially increase base station and mobile unit power limits, some relaxation of the construction requirements may be warranted, perhaps targeted to non-urbanized areas. Any such relief should be extended equally to all licensees and all channel blocks.

D. LIMITED MODIFICATIONS TO THE TECHNICAL RULES ARE APPROPRIATE AND NECESSARY TO ACHIEVE THE COMMISSION'S OBJECTIVES FOR PCS.

Base Station Power Limits. A number of petitioners requested that the Commission reconsider the 100 W limit on base station power adopted in the Order. Parties seeking an increase in base station power limits to 1000 W (or higher) include APC (1000 W ERP),

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[37] Section 309(j)(4).

[38] Petitioners seeking the de jure elimination of construction deadlines include Alliance, Columbia and Rural Cellular Association (which urge the adoption of cellular-like fill-in rules), BellSouth (which recommends reliance on marketplace forces), and SW Bell (which seeks an exemption from construction requirements for non-aggregated 10 MHz blocks).

[39] Petitioners seeking the de facto elimination of construction requirements include Sprint (credit should be given for cellular coverage) and Motorola (licensees should be allowed to establish their own coverage standards).

Ameritech (1000 W), MCI (1000 W ERP), Motorola (1000 W ERP), Northern (1000 W EIRP), PacBell (2400 W EIRP per RF channel), Telocator (1000 W ERP), TWT (no limit or, at a minimum, levels permitting coverage comparable to cellular) and US West (minimum of 1600 W EIRP). As demonstrated by MCI and others, a substantial increase in the base station power limit — to 1000 W ERP or higher — would facilitate the economic deployment of PCS by reducing the number of base stations needed, permit the deployment of new technologies, and facilitate competition with cellular. An increase in the base station power limit would not result in increased interference to microwave systems[40/] or in increased exposure to RF radiation. For these reasons, MCI reiterates its recommendation that the Commission increase base station power limits to not less than 1000 W ERP (1600 W EIRP).

Subscriber Unit Power Limits. Both MCI and Telocator urged the Commission to relax the 2 W power limit applicable to "mobile units." An increase in the permissible power levels to 12 W ERP (20 W EIRP) for non-handheld subscriber units would increase the flexibility of 2 GHz PCS licensees to meet customer requirements. These proposals should be adopted.

PCS-Microwave Interference Issues. A number of parties noted that the Commission's reference to TIA Bulletin TSB10-E might result in an unintended "freeze" of interference criteria. The petitions, in general, support revision of the Commission's rules to

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[40/] As demonstrated in the study submitted by Northern, the net effect of an increase in base station power limits is a reduction in total interference to microwave systems. The increase in received interference at a microwave receiver from any one PCS base station is more than offset by the decreased number of base stations.

incorporate sufficient flexibility to accommodate industry-derived consensus solutions, including TSB10-F, the successor to TSB10-E. MCI supports these petitioners' recommendations that the rules be recast in a form that provides sufficient flexibility to implement industry-developed consensus standards for PCS-microwave interference protection.

API and UTC urge the Commission to adopt formal frequency coordination rules for PCS-to-microwave interference, such as those employed in Part 21 of the Commission's rules. These parties have failed to demonstrate that a requirement that PCS systems be designed using TSB10-E (and, in the future, TSB10-F) protection criteria will afford inadequate protection, or that a formal third-party coordination process offers any benefits that outweigh the associated delays. API's request that the Commission impose specific "sanctions" on PCS licensees causing interference, including a requirement that PCS licensees shut down transmitters on receipt of notice from any microwave licensee of "objectionable" interference is singularly without merit. API's proposal, if implemented, would give OFS licensees virtually unfettered discretion to compel a PCS licensee to suspend service to hundreds or thousands of customers merely by notifying the licensee that it has detected "objectionable" interference.

Bell Atlantic (Section VI, p. 23) recommends the adoption of a policy requiring microwave users to upgrade their systems whenever a PCS operator (1) demonstrates that upgrading the microwave system would reduce interference from the PCS system to the microwave system; and (2) the PCS operator is willing to pay the cost of the upgrade. MCI supports the adoption of such a policy.